FILE COPY

No. 34

In the Supreme Court of the United States

OCTOBER TERM, 1937.

- Supreme Court
FILED
JUN 21 193
CHARLES ELMORE CR
CL

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA,
W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA,
and
FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,
RESPONDENTS

MOTION TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA AS A PARTY RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MERRILL S. JUNE
BRADLEY B. GILMAN
Attorneys for Petitioner
340 Main Street
Worcester, Massachusetts

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 34

WORCESTER COUNTY TRUST COMPANY, EXECUTOR, PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA,

W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA,

and

FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,

RESPONDENTS

MOTION TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA AS A PARTY RESPONDENT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes Worcester County Trust Company, Executor, Petitioner in this cause, and alleges:

1. That on January 9, 1937, Harry B. Riley, a resident and citizen of the State of California, succeeded Ray L. Riley as Controller of the State of California. The respondents, Gentry and Sproul, continue to hold office. Harry B. Riley has adopted

the attitude of his predecessor in office (R. 4, Par. 9 of Complaint). The said Harry B. Riley, Gentry and Sproul are threatening to assess and attempt to collect from the petitioner the estate, inheritance and succession taxes imposed by the California Tax Statutes upon the estates of California decedents. Since January 9, 1937, they have directly or indirectly participated in this litigation both in the Circuit Court of Appeals for the First Circuit and in this Court.

2. That Sections 1001 and 1004 of the California Political Code, Section 385 of the California Code of Civil Procedure, the Act of February 13, 1925 (U. S. Code, Section 780) and Rule 19, sub-section 4 of this Court, permit the substitution of said Harry B. Riley as a party respondent in place of said Ray L. Riley.

WHEREFORE Worcester County Trust Company, Executor, moves that Harry B. Riley, Controller of the State of California be substituted as a party respondent in place of Ray L. Riley, Controller of the State of California, resigned.

WORCESTER COUNTY TRUST COMPANY, Executor

By,

Merrill S. June

Bradley B. Gilman

Attorneys

APPENDIX TO MOTION TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA AS A PARTY RESPONDENT

A.

Certificate of Secretary of State of the State of California

(Original certificate attached to signed copy of this motion)

State of California
Department of State

I, FRANK C. JORDAN, Secretary of State of the State of California, do hereby certify that at the general election held throughout said State on the 6th day of November, 1934, RAY L. RILEY was elected Controller of the State of California;

That the official oath of office and bond of said Ray L. Riley, as said Controller, were duly filed in this office pursuant to law, and that said Ray L. Riley was, at all times between the 7th day of January, 1935, and the 9th day of January, 1937, the duly elected, qualified and acting Controller of the State of California.

I further certify that on the 9th day of January, 1937, the Governor of said State issued a Commission

appointing HARRY B. RILEY Controller of the State of California, vice Ray L. Riley, resigned; that his official oath of office and bond were duly filed in this office, and that said Harry B. Riley is, and has been at all times since said date, the duly appointed, qualified and acting Controller of the State of California.

IN WITNESS WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 7th day of June, A.D. 1937.

FRANK C. JORDON
Secretary of State
By Chas J. Hagerty
Deputy

B.

Applicable Statutes of the State of California

Section 1001 of the California Political Code provides:

> "A vacancy in the office of either the Secretary of State, Controller, Treasurer, Attorney General, Surveyor General, or Clerk of the Supreme Court must be filled by a person appointed by the Governor, who shall hold his office for the balance of the unexpired term."

Section 1004 of the California Political Code provides:

> "Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties and obligations of the officer whose vacancy he fills."

Section 385 of the California Code of Civil Procedure provides:

> "An action or proceeding does not abate by the death, or any disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue."

C.

Applicable Federal Statute

Section 780 of the U. S. Code provides:

"Where during the pendency of an action, suit or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.

(b) Similar proceedings may be had and taken where an action, suit, or proceeding brought by or against an officer of a State, or of a county, city, or other governmental agency of a State, is pending in a court of the United States at the time of the officer's death or separation from the office.

(c) Before a substitution under this section is made, the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the application therefor and accorded an opportunity to present any objection which he may have."